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| EXAMINER |
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WILSON, YOLANDA L

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| ART UNIT | PAPER NUMBER |
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2113

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10/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,045

Applicant(s)

MAW ET AL.

Examiner

Yolanda L. Wilson

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/09/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-2 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-2 recite the limitations 'a Windows .NET Operating System...a HealthMonitor Service...user client application/script means'. These limitations are direct to software per se and need to be stored in memory.

3. Claims 3-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 3-11 recite the limitations 'means for selectively monitoring...means to create...means to enable...means to check...means to collect...means to apply...'. These limitations are direct to software per se and need to be stored in memory.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2113

5. Claims 3,5-7,9,12,13 are rejected under 35 U.S.C. 102(e) as being anticipated by Srivastava et al. (US Publication Number 20030212928A1). As per claim 3, Srivastava et al. discloses in a Multi-processor network involving multiple numbers of "local systems", a Health Monitoring and corrective response service for handling each said "local system" involved, comprising: (a) means for selectively monitoring each one of said local systems in said network automatically at startup; (b) means to create a collection of health events and predictive events; (c) means to enable a series of defined operating policies P; (d) means to check each local system, for any violation of said series of operating policies P; (e) means to collect a list of policy violations detected; (f) means to apply corrective actions in those areas where policy violations have been detected on page 2, paragraph 0019; pages 2-3, paragraphs 0020-0024. The multiprocessor network consists of the processors on the servers and the servers. The local systems are the sub-systems.

6. As per claim 5, Srivastava et al. discloses wherein said means (c) to enable operating policies includes: (c1) means to check when each policy P is enabled in a local system; (c2) means to read a file of P attributes to determine; (i) what to monitor; (ii) how often to monitor; (iii) what action to take when a policy violation is sensed on pages 2-3, paragraphs 0021-0023.

7. As per claim 6, Srivastava et al. discloses wherein said means (c) to enable operating policies includes: (6c1) means for utilizing a separate processing Thread T for monitoring each provider on pages 2-3, paragraphs 0021-0023.

Art Unit: 2113

8. As per claim 7, Srivastava et al. discloses wherein said means (6c1) includes: (6c1a) means to check a data item specified in said policy P; (6c1b) means to sense a violation of Policy P; (6c1c) means to create a Violation Event and add it to said collection of Health Events on pages 2-3, paragraphs 0021-0023.

9. As per claim 9, Srivastava et al. discloses where said means (6c1b) includes: (6c1b1) means to utilize a User-Client application/ script means to provide corrective action on said violation of Policy P in paragraphs 0023,0027.

10. As per claim 12, Srivastava et al. discloses in a network of multi-processors having a series of local systems operated by Client-Users, a method for monitoring the health of and for providing remedial actions to said monitored local systems comprising the steps of: (a) monitoring the state of hardware and software in each of said local systems over a selected time period; (b) collecting Health Events data for each local system; (c) enabling applications/scripts for handling system health conditions deemed outside of pre-set parameters reported in a Health Events Object on page 2, paragraph 0019; pages 2-3, paragraphs 0020-0024.

11. As per claim 13, Srivastava et al. discloses wherein step (b) further includes the steps of: (b1) establishing Health Events parameters which set standards of acceptability and non-acceptability for each local system; (b2) sensing each local system for operations which violate said parameters of acceptability on pages 2-3, paragraphs 0021-0023.

12. As per claim 16, Srivastava et al. discloses wherein step (e) includes the steps of: (e1) establishing a pre-set Policy P for each local system; (e2) collecting violations of

each said Policy P; (e3) enabling scripts to handle each noted violation of said Policy P on page 2, paragraph 0019; on pages 2-3, paragraphs 0020-0024.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 4,8,10,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srivastava et al. in view of Wookey et al. (USPN 6182249B1). As per claim 4, Srivastava et al. fails to explicitly state wherein said means (b) to create a collection includes: (b1) means to sense current operational and availability problems in each local system; (b2) means to sense future trends which can predict future problems which may occur.

Wookey et al. discloses this limitation in column 12, lines 14-26.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have said means (b) to create a collection includes: (b1) means to sense current operational and availability problems in each local system; (b2) means to sense future trends which can predict future problems which may occur. A person of ordinary skill in the art would have been motivated to have said means (b) to create a collection includes: (b1) means to sense current operational and availability problems in each local system; (b2) means to sense future trends which can predict

Art Unit: 2113

future problems which may occur because predicting events helps to predict when the failure occurs and to perform action to keep the failure from occurring.

15. As per claim 8, Srivastava et al. fails to explicitly state (6c1d) means to check the monitoring of Policy P to sense if predictive data is encountered; (6c1e) means to add each sensing of a predictive event to said Predictive Events collection.

Wookey et al. discloses this limitation in column 12, lines 14-26.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have (6c1d) means to check the monitoring of Policy P to sense if predictive data is encountered; (6c1e) means to add each sensing of a predictive event to said Predictive Events collection. A person of ordinary skill in the art would have been motivated to have (6c1d) means to check the monitoring of Policy P to sense if predictive data is encountered; (6c1e) means to add each sensing of a predictive event to said Predictive Events collection because predicting events helps to predict when the failure occurs and to perform action to keep the failure from occurring.

16. As per claim 10, Srivastava et al. fails to explicitly state wherein means (6c1e) includes: (6c1e1) means to send a warning signal to said client-user regarding possible future failure of said predictive event in said Predictive Events collection.

Wookey et al. discloses this limitation in column 12, lines 14-26.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have means (6c1e) includes: (6c1e1) means to send a warning signal to said client-user regarding possible future failure of said predictive event in said Predictive Events collection. A person of ordinary skill in the art would have been

Art Unit: 2113

motivated to have means (6c1e) includes: (6c1e1) means to send a warning signal to said client-user regarding possible future failure of said predictive event in said Predictive Events collection because actions can be performed to keep the failure from occurring.

17. As per claim 14, Srivastava et al. fails to explicitly state wherein step (b1) includes the steps of: (b1a) establishing trend setting predictive means to sense when an event is trending toward a direction of failure; (b1b) notifying said Client-User of impending failure events.

Wookey et al. discloses this limitation in column 12, lines 14-26.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have step (b1) includes the steps of: (b1a) establishing trend setting predictive means to sense when an event is trending toward a direction of failure; (b1b) notifying said Client-User of impending failure events. A person of ordinary skill in the art would have been motivated to have step (b1) includes the steps of: (b1a) establishing trend setting predictive means to sense when an event is trending toward a direction of failure; (b1b) notifying said Client-User of impending failure events because predicting events helps to predict when the failure occurs and to perform action to keep the failure from occurring.

18. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Srivastava et al. in view of Wikipedia (.NET Framework).

19. As per claim 11, Srivastava et al. fails to explicitly state wherein said network is operated on a .NET platform.

Art Unit: 2113

Wikipedia discloses this limitation on page 1.

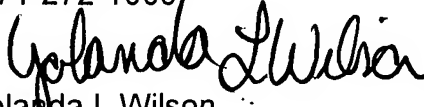
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have said network be operated on a .NET platform. A person of ordinary skill in the art would have been motivated to have said network be operated on a .NET platform because of the ability of the .NET Framework to be used in a Microsoft Windows operating system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yolanda L. Wilson whose telephone number is (571) 272-3653. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2113

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yolanda L. Wilson
Primary Examiner
Art Unit 2113